I would add a further order by way of a rider, that in the event of the application to the Director being granted, the Registrar of Titles or his Deputy will also, in consequence, cancel any memorial of registration of the transfer of mortgage aforesaid which may appear in the Register of Title and make such other consequential orders as may be necessary.

In considering the application aforesaid, the Director or his Deputy will no doubt have regard, under "other fact or matter" in section 13 of the Order, to the extreme age of this transfer of mortgage, the fact that the loan secured by it has long since become statute-barred, the fact (if that be the case) that the mortgagee is untraceable and has at no time approached the applicant or her co-owners for repayment.

Order accordingly.

FOO SEY KOH & ORS. v. CHUA SENG SENG & ORS.

[O.C.J. (Shankar J.) February 9, 1985]

[Johor Bahru – Civil Suit No. 494 of 1983]

Practice & Procedure – Interest – Whether Subordinate Court may entertain claim where principal amount claimed is within jurisdiction but interest claimed thereon would result in cumulative figure in excess of its monetary jurisdiction – Subordinate Courts Act, 1948, ss. 65 & 67, Third Schedule, art. 21 – Civil Law Act 1956, ss. 2 & 11 – Courts of Judicature Act, 1964, First Schedule, art. 7 – R.H.C. 1980, O.42 r.12 – Subordinate Courts Rules, 1980, O.28 r.18 & O.29 r.12.

Jurisdiction – Subordinate Court – Interest – Whether Subordinate Court may entertain claim where principal amount claimed is within jurisdiction but interest claimed thereon would result in cumulative figure in excess of its monetary jurisdiction.

The court in this case was faced with a poser whether a Subordinate Court may entertain a claim where the principal amount sued for is within the jurisdiction but the interest claimed thereon would result in cumulative figure which is in excess of its monetary jurisdiction.

The total plaintiffs' claim of $22,000 plus total interest of $1,266.66 at the time of filing amounted to $23,666.66. The real dispute between the parties was whether interest should be awarded and if so at what rate, and whether the plaintiffs should have their costs on the High Court scale or on a lower court scale.

Held: (1) section 11 of the Civil Law Act 1956 and Order 28 rule 18 of the Subordinate Courts Rules empowered the court to give interest over and above the sum for which judgment is given. The period from which the interest is to run, and the rate at which the interest is to be given, in a case such as this, is purely discretionary;

(2) to expect a plaintiff to be able to compute what the interest element is going to be, working on such imponderables, and thereby to determine in which court he shall file his action could not have been the intention of the law. This, therefore, is a case where the plaintiff in this case should have initiated his action in the Sessions Court since the debt which he was suing to recover was less than $25,000;

(3) this is a case where there is every indication that the defendants wrongfully withheld the plaintiffs' money. The court would therefore award the plaintiffs interest from the date on which the cause of action arose;

(4) in view of the apparent absence of previous local guidance on this matter and the various other authorities which have been cited by the plaintiffs' counsel which appear to justify the cause of action they adopt in filing this matter in the High Court, the plaintiffs' action in continuing with the proceedings here was not unjustified.

Cases referred to:

(1) *Crossingham* v. *Park* [1928] 1 K.B. 330.
(2) *Toronto Railway Co.* v. *Corporation of the City of Toronto* [1906] A.C. 117.

CIVIL SUIT.

L. M. Ong for the plaintiffs.
C. C. Aiyathurai for the defendants.

Cur. Adv. Vult.

Shankar J. : The issue in this matter is whether a Subordinate Court may entertain a claim where the principal amount sued for is within the jurisdition but the interest claimed thereon would result in a cumulative figure which is in excess of its monetary jurisdiction.

On April 26, 1983 the plaintiffs entered into a written agreement with the defendants for the sale of some shares at a price of $120,000. $48,000 was to be paid upon execution of the agreement and the balance of $72,000 within 45 days thereafter, that is to say before June 4, 1983. The sum of $48,000 was duly paid but the balance of $72,000 was not. Instead $36,000 was paid on July 7, 1983 and a further sum of $14,000 on August 4, 1983 leaving a balance due of $22,000.

On October 1, 1983, the plaintiffs filed this action in this High Court. They claimed for the payment of the balance due of $22,000 with interest at the rate of 10% per annum from June 4, 1983 up to the date of payment and interest

at the rate of 10% per annum on $36,000 from June 4, 1983 up to July 7, 1983 and interest at the rate of 10% per annum on $14,000 from June 4, 1983 up to August 4, 1983.

On August 3, 1983, that is after the writ was filed, the defendants sent the plaintiffs a bank draft for $12,000. This left a principal sum of only $10,000 due. Thereafter the plaintiffs took out an application for Summary Judgment.

The defendants' response to this was to apply for a transfer of the action to the Magistrate's Court, Segamat by virtue of the fact that the amount in dispute according to them had now been brought within the jurisdiction of that Court.

This application was fixed for hearing before me. In the meantime the Senior Assistant Registrar adjourned the application for Summary Judgment pending the disposal of the application for transfer.

It is obvious that the real dispute between the parties is not the question of a transfer at all but whether interest should be awarded and if so at what rate, and whether the plaintiffs should have their costs on the High Court scale or on a lower Court scale.

The defendants had worked out the amount claimed by the plaintiffs up to the date on which the writ was filed, by way of principal and interest as follows:-

i) On $22,000 at 10% from 4.6.83 to 1.10.83:

$$\$22{,}000 \times \frac{10}{100} \times \frac{4}{12} = \$\ 733.33$$

ii) On $36,000 at 10% from 4.6.83 to 4.7.83:

$$\$36{,}000 \times \frac{10}{100} \times \frac{1}{12} = \$\ 300.00$$

iii) On $14,000 at 10% from 4.6.83 to 4.8.83:

$$\$14{,}000 \times \frac{10}{100} \times \frac{2}{12} = \$\ 233.33$$

Total interest claimed at the time of filing $ 1,266.66

Total of plaintiffs' claim

$22,000 + $1,266.66 = $23,666.66

The plaintiffs cannot dispute these figures but it is contended that if the interest claimed prior to the date of the filing of the action is added to the principal amount and the interest claimed which would have continued to accrue due from the date of the filing of the writ up to the date of realisation, the total amount to be awarded would have exceeded the sum of $25,000 and therefore the plaintiffs would have been compelled by virtue of section 65(3) of the Subordinate Courts Act 1948 (Revised at 92) to abandon that part of their money claimed which would have been in excess of $25,000 on the date on which the Sessions Court made its decree. The estimated delay between filing and hearing in the Sessions Court was said to be in excess of two years and the plaintiffs urged that in the circumstances they were fully entitled to bring this action in the High Court and to be entitled to High Court costs in addition to the interest claimed.

Now section 65 of the Subordinate Courts Act 1948 provides:

"(1) Subject to the limitations contained in this Act, a Sessions Court shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject matter does not exceed $25,000.

(3) When the parties to an action or suit which, if the amount in dispute or value of the subject matter thereon did not exceed the limit of the jurisdiction, would be cognisable by a Sessions Court, have entered into an agreement in writing that the Sessions Court shall have jurisdiction to try the action or suit, the Sessions Court shall have jurisdiction to try the same, although the amount of the subject matter thereof may exceed the value limit of jurisdiction."

Section 67 of the Act provides that:

"A plaintiff may relinquish any portion of his claim in order to bring the action or suit in the jurisdiction of the Sessions Court, but he shall not afterwards sue in respect of the portions so relinquished.

Now section 11 of the Civil Law Act 1956 provides:

"In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section –

(a) shall authorise the giving of interest upon interest;

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange."

Thus section 11 authorises the granting of interest on any debt from the date the cause of action arose, but the amount of interest that may be awarded is left at large, and the section does not appear to apply to a situation where the parties have already contractually agreed a rate of interest. By virtue of section 2 of the Act, it applies equally to the High Court as to the Subordinate Court.

Another provision relating to interest is to be found in Article 7 of the First Schedule of the Courts of Judicature Act, 1964 by which the High Court is empowered "to direct interest to be paid on debts, including judgment debts and on sums found due on taking accounts between party..." The identical provision appears in Article 21 of the Third Schedule to the Subordinate Courts Act 1948.

Order 42 rule 12 of the Rules of the High Court 1980 provides that,

"Every judgment debt shall carry interest at the rate of 8 percentum per annum, or at such other rate not exceeding the rate aforesaid as the Court directs, such interest to be calculated from the date of judgment until the judgment is satisfied."

Now Order 28 rule 18 of the Subordinate Courts Rules 1980 virtually re-enacts section 11 of the Civil Law Act except that the rate at which interest may be given is limited to "such rate not exceeding 8% per annum..." In the result, both the High Court and the Subordinate Courts have power to grant interest not exceeding 8% from the date when the cause of action arose up to the date of the judgment.

After the judgment, Order 29 rule 12 of the Subordinate Courts Rules provides that the judgment debt shall carry interest at the interest of 8% per annum or at such other rate not exceeding the rate aforesaid as the Court shall direct, such interest to be calculated from the date of judgment until the judgment is satisfied.

It has been submitted to me by the parties that the point at issue is free from authority. However, I have derived some oblique assistance from *Halsbury's* Statutes of England Vol. 7 (3rd Edition) at page 327 where there is a commentary on section 39 of the County Courts Act 1959 and the case of *Crossingham* v. *Park*[1] and especially the passage at page 338 which reads:

"We think that the test whether a Court is a Court where it would be competent for 'a money lender' (that is, for any particular money lender) to take 'proceedings for the recovery of *money lent*' is a test to be applied with reference to the strict meaning of the two italicised words. If the whole amount of the 'money lent' whether repayable in instalments or otherwise, without the addition of any claims arising under an agreement or agreements to pay interest, or 'expenses, enquiries, fines, premium, renewals, or any other charges,' is a sum within the jurisdiction of the County Court, then in every such case, even though the money lender has not taken any proceedings, and though the time has not come for taking proceedings, the borrower may make application under the Act to the County Court but not otherwise. This interpretation gives their ordinary and simple meaning to the words 'money lent', and is applicable in every case. The fact is that a claim by a money lender is often loosely regarded as a claim for 'money lent' without more, whereas it is, practically always, not merely a claim for money lent, but such a claim in combination with claims of a different nature, although they are of course incident to the transaction of borrowing the money lent."

Following the words of Order 28 rule 18 of the Subordinate Courts Rules the question one asks oneself here is "What is the debt which the plaintiffs brought this action to recover?" On the assumption that the figure was $25,000 it could not be disputed that the Sessions Court had jurisdiction to entertain the claim. Section 11 of the Civil Law Act and Order 28 rule 18 of the Subordinate Courts Rules, in my respectful view, empowered the Court to give interest over and above the sum for which judgment is given.

It is to be noted that the period from which the interest is to run, and the rate at which the interest is to be given, in a case such as this, is purely discretionary. To expect a plaintiff to be able to compute what the interest element is going to be, working on such imponderables, and thereby to determine in which Court he shall file his action, could not, in my respectful view, have been the intention of the law. This, therefore, is a case where the plaintiff should have initiated his action in the Sessions Court since the debt which he was suing to recover was less than $25,000. What interest the Sessions Court would have awarded was of course entirely a matter for it upon the merits of the case.

These considerations will not, of course, apply to claims for unliquidated damages where there is a reasonable probability that the award may be in excess of the jurisdiction of the Subordinate Courts or where the interest rate has already been contractually agreed between the parties so as to make the debt sued for not only a claim for principal but also for interest accrued due.

In all the circumstances of this case, and parti-

cularly in view of the fact that there was no defence to the plaintiff's claim in this action, I refused the application for a transfer to the Magistrate's Court because in my view that would have been tantamount to an abuse of process. Furthermore I gave judgment to the plaintiff for the sum of $10,000 sued as the defendants do not dispute they owe this money.

I reserved judgment on the question of interest and costs. As for the former it is well established "that in all cases where, in the opinion of the Court, the payment of a just debt has been improperly withheld and it seems to be fair and equitable that the party in default should make compensation by payment of interest, it is incumbent upon the Court to allow interest for such time and at such rate as the Court may think right" (*Toronto Railway Co.* v. *Corporation of the City of Toronto*[2]) – and see *Stroud's* Judicial Dictionary (4th Edition) – Volume 3 page 1400. This is a case where there is every indication that the defendant wrongfully withheld the plaintiffs' money and I feel constrained to award them interest from the date on which the cause of action arose. This interest I award at the rate of 8% per annum on $22,000 from June 4, 1983 up to February 4, 1985 and on $36,000 at 8% from June 4, 1983 to July 4, 1983 and on $14,000 at 8% from June 4, 1983 to August 4, 1984. Since the law precludes the granting of interest upon interest the plaintiff will also have interest on the judgment debt of $10,000 as from February 4, 1985 until realisation.

Costs have always been in the discretion of the Courts. In view of the apparent absence of previous local guidance on this matter and the various other authorities which have been cited by the plaintiffs' counsel appear which to justify the cause of action they adopt in filing this matter in the High Court, I hold that their action in continuing with the proceedings here was not unjustified. It was perfectly open to the defendants to pay up the balance of the claim, which they do not deny was due, immediately after this action was filed but the matter has gone on since then and they must bear the responsibility.

I have therefore given judgment accordingly.

Order accordingly.

Solicitors: *L.M. Ong & Co.; C.C. Aiyathurai & Co.*

DOREEN TAN YING YING v. CHONG TET ON

[O.C.J. (Vohrah J.) June 27, 1985]

[Kuala Lumpur – Civil Suit No. F. 177 of 1984]

Strata Title – Condominium – Parking bay in – Whether sale of parking bay independently of apartment permitted by law – Strata Titles Act 1985, ss. 42 & 69.

Practice & Procedure – Injunction to restrain defendant from dealing with parking bay in condominium pending suit – Court allowing status quo to remain until trial on balance of convenience.

This was an application by the plaintiff for an injunction to restrain the defendant and his agents from dealing with or using a parking bay in a condominium pending the disposal of the suit.

The plaintiff purchased 2 apartments, No. 10B-4 (5-10A) and No. 9D(f-9A) from Realty Development Corporation of Malaysia Sdn. Bhd. (the Development Corporation) in October 1979. Subsequently, she purported to purchase parking bay L. 17 from the Development Corporation in March 1982. Marked over this parking bay were the figures "5-10A". In September 1983, the plaintiff sold apartment No. 10B-4 (5-10A) to the defendant by way of a deed of assignment. A letter from the Development Corporation confirmed that the plaintiff had purchased the parking bay separately from the two apartments she bought originally. The plaintiff contended that she sold the apartment to the defendant independently of the parking bay but the defendant claimed that the plaintiff's agent had indicated prior to the sale that the parking bay "belonged to the said apartment" he was purchasing.

The only issue before the court was whether the Development Corporation was in law permitted to sell a parking bay independently of an apartment.

Held: (1) having regard to sections 42 and 69 of the Strata Titles Act 1985 the Development Corporation was not in law permitted to sell the parking bay as a separate entity.

(2) even if this was a wrong conclusion as a matter of law, on a balance of convenience the *status quo* should remain until the trial.

CIVIL SUIT.

V. Doshi for the plaintiff/applicant.
J. Fam for the defendant/respondent.

Cur. Adv. Vult.

Vohrah J. : This was an application by the plaintiff for an injunction to restrain the defendant and his agents from dealing with or using a parking bay in a condominium pending the disposal of the suit. It first came up for hearing on October 10, 1984 when I made an order dismissing the application with costs. On an application under Order 56